



**FILED**

May 08 2008, 11:35 am

*Beverly Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Mary Beth Bonaventura, Senior Judge  
Cause No. 45D06-0707-JT-4  
45D06-0707-JT-5

May 8, 2008

**OPINION ON REHEARING - NOT FOR PUBLICATION**

**ROBB, Judge**

Delores W. (“Mother”) seeks rehearing of our decision in In re R.W., Cause No. 45A03-0707-JV-348, (Ind. Ct. App. 2008), publ’d at 881 N.E.2d 1119 (Table) and invites this court to revisit the issue of whether Mother was denied her constitutional right to due process when she did not receive court appointed counsel in the CHINS proceedings. Although we affirm our original opinion in all respects, we write on rehearing to clarify our holding regarding whether a parent, custodian, or legal guardian has a statutory right to court appointed counsel in CHINS proceedings.

In her Petition for Rehearing, Mother asserts for the first time she was denied due process of law in light of Indiana Code section 31-34-4-6(C) which requires under certain circumstances the appointment of counsel. The record indicates that Mother appeared in person for the CHINS Detention Hearing held on July 13, 2005. However, neither in her Appellant’s Brief to this court, nor in her Petition for Rehearing, does Mother assert that the trial court failed to advise her of her right to counsel, whether court appointed or otherwise, during the CHINS proceedings. To the contrary, the trial court’s CHINS Detention Hearing Order clearly states that Mother was “advis[ed] of [her] rights.” Appellant’s App. at 4. Furthermore, we must assume that Mother never requested court appointed counsel because the record does not reflect that the request was denied.

Once having been advised of the right to counsel, Indiana Code section 31-34-4-6(C)

clearly states that “[t]he parent . . . has the right to be represented by a court appointed attorney . . . *upon the request of the parent . . .*” (Emphasis added.) Mother failed to do so. Thus, Mother’s due process argument pertaining to the CHINS proceedings must fail. We pause, however, to clarify a statement made in our original opinion. In addressing the merits of Mother’s due process claim, we stated, “Although a juvenile court has discretion to appoint counsel for a parent in any juvenile proceeding, ‘no statute provides a parent the right to court appointed counsel in CHINS proceedings.’” R.W., slip op. at 4 (citing In re R.R., 587 N.E.2d 1341, 1345 (Ind. Ct. App. 1992)). In making this statement, we did not intend to imply that there are no statutory provisions for the appointment of counsel in all CHINS proceedings, no matter the circumstances. Rather, we intended, and clarify here, that no statute provides parents the *absolute right* to court appointed counsel in CHINS proceedings.

As stated previously, Indiana Code section 31-34-4-6(C) provides that a parent, custodian, or guardian must *request* the appointment of counsel, and the trial court must thereafter *find* that the parent, custodian or guardian has insufficient means for obtaining representation as described in Indiana Code 34-10-1 before the statutory right to court appointed counsel in CHINS proceedings attaches. Here, Mother failed to provide any such evidence. We therefore grant rehearing for the limited purpose of clarifying the above-cited statement made in our original opinion, which should not be interpreted as contradicting Indiana Code section 31-34-4-6(C). We affirm our original opinion in all other respects.

FRIEDLANDER, J., and MATHIAS, J., concur.